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Khatijah bt Abdullah & Ors v Mohd Isa bin Biran

B FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 02(f)-28–04 OF 2015(W)
ARIFIN ZAKARIA CHIEF JUSTICE, ZULKEFLI CJ (MALAYA), SURIYADI, HASAN LAH AND AZIAH ALI FFCJ
12 JANUARY 2017

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Contract — Agreement — Sale and purchase — SPA contained condition that sale of land could only be effected after state authority consented to transfer of land — Whether it was respondent's obligation to apply for state authority's consent — Whether power of authority granted to respondent made respondent responsible D *for applying for consent — Whether requirement for consent to transfer from state authority condition precedent — Whether respondent's delay in applying for consent unreasonably long — Whether SPA void and unenforceable — Whether defence of limitation not available to respondent*

E The first, second, third and fourth appellants and one Mohtar bin Abdullah ('Mohtar') had entered into a sale and purchase agreement ('the SPA') by which they had agreed to sell a property situated in Sungai Buluh, Selangor ('the land') to the respondent for RM200,000. The SPA contained a condition that the sale of the land could only be effected after the state authority had consented to the F transfer of the land. The respondent paid a deposit of RM70,000 upon the execution of the SPA, with the balance of the purchase price to be paid within three months from the date when the state authority consented to the transfer of the land. Subsequently, the first, second, third and fourth appellants and Mohtar executed a power of attorney ('the PA') in favor of the respondent to G deal with the land. Upon the death of Mohtar, his share came to be vested in his beneficiaries ('the fifth, sixth, seventh, eighth and ninth appellants'), who discovered that the balance of the purchase price of the land had not been paid to the appellants. The appellants then filed a suit against the respondent for, inter alia, a declaration that the SPA and the PA were no longer valid and H enforceable and damages with costs. The respondent disputed the appellants' claim and argued that it was not his obligation to apply for the state authority's consent. The respondent also counterclaimed seeking for, amongst others, a declaration that the SPA was valid and enforceable and damages for fraud. The trial judge found that the sale of the land was contingent upon the state I authority consenting to the transfer and that it was the respondent's obligation to apply to the state authority for such consent. As there was no evidence of the respondent applying for such consent and the balance of the purchase price had not been paid to the appellants, the High Court held that the appellants were entitled to rescind the SPA and be discharged from further performance of the

SPA. The respondent's counterclaim was dismissed because the respondent had failed to prove fraud. The aggrieved respondent appealed to the Court of Appeal on the grounds that the appellants' claim was time barred. The Court of Appeal found that since the appellants' cause of action was based on a breach of the SPA, the applicable provision was s 6 of the Limitation Act 1953 and that the appellants' claim was thus time-barred. Consequently, the Court of Appeal allowed the respondent's appeal and his counterclaim. The appellants had since obtained leave to proceed with the present appeal. The appellants submitted that the Court of Appeal had erred in finding their claim to be time-barred. It was the appellants' argument that the SPA was void on account of the respondent's failure to apply for consent from the State Authority and the SPA was void, the defence of limitation was not available to the respondent.

Held, allowing the appeal with costs of RM50,000:

(1) At the material time when the PA was executed by the appellants in favour of the respondent, the terms of the PA had clothed the respondent with authority to deal with the land. As the land was subject to the restriction in interest, the authority conferred upon the respondent under the PA should necessarily include the authority to apply for the required consent to transfer from the state authority. Hence, the obligation to apply for the required consent would rest with the respondent (see paras 22–23).

(2) The requirement for consent to transfer from the state authority was a condition precedent, which ought to be fulfilled before any transfer of the land was possible. Until this condition was fulfilled by the respondent. The SPA could not take effect and the sale of the land could not be completed. However, despite almost two decades having passed since the execution of the PA, the respondent had not furnished any evidence to show that he had taken any steps to apply to the state authority for the requisite consent to transfer. The respondent's delay to take action was unreasonably long and under such circumstances the respondent ought not to be allowed to insist that the SPA was still valid and enforceable (see paras 29–30).

(3) Therefore, the SPA had become void and s 33 of the Contracts Act 1950 would apply. A void contract did not generate any enforceable right or duty and where there was neither right nor duty, limitation could not be invoked. As such, the defence of limitation was not available to the respondent (see para 31).

[Bahasa Malaysia summary

Perayu pertama, kedua, ketiga dan keempat dan seorang yang bernama Mohtar bin Abdullah ('Mohtar') telah memasuki satu perjanjian jual beli ('PJB') yang mana mereka bersetuju untuk menjual hartanah terletak di Sungai Buluh,

Selangor ('tanah') kepada responden sebanyak RM200,000. PJB mengandungi syarat bahawa jualan tanah hanya boleh terjadi selepas pihak berkuasa negeri telah membenarkan pindah milik tanah. Responden membayar deposit sebanyak RM70,000 apabila PJB dilaksanakan, dengan baki harga jualan kena dibayar dalam masa tiga bulan daripada tarikh apabila pihak berkuasa negeri membenarkan pindah milik tanah. Selanjutnya, perayu pertama, kedua, ketiga dan keempat dan Mohtar melaksanakan surat kuasa wakil ('SKW') bagi pihak responden untuk menguruskan tanah. Apabila kematian Mohtar, sahamnya diletakhakkan atas warisnya ('perayu kelima, keenam, ketujuh, kelapan dan kesembilan'), yang mendapati bahawa baki harga jualan tanah belum dibayar kepada perayu. Perayu kemudian memfailkan guaman terhadap responden antara lain satu deklarasi bahawa PJB dan SKW tidak lagi sah dan tidak boleh dikuatkuasakan serta ganti rugi dengan kos. Responden mempertikaikan tuntutan perayu dan menghujahkan bahawa ia bukanlah tanggungjawabnya untuk memohon kebenaran pihak berkuasa negeri. Responden menuntut balas memohon untuk, antara lain, satu deklarasi bahawa PJB adalah sah dan boleh dikuatkuasakan serta ganti rugi untuk fraud. Hakim perbicaraan membenarkam pindah milik dan bahawa ia adalah tanggungjawab responden untuk memohon kepada pihak berkuasa negeri untuk kebenaran sebegitu. Kerana tiada keterangan responden memohon untuk kebenaran sebegitu dan baki harga jualan belum dibayar kepada perayu, Mahkamah Tinggi memutuskan bahawa perayu berhak untuk membatalkan PJB dan dilepaskan daripada meneruskan pelaksanaan PJB. Tuntutan balas responden ditolak kerana responden gagal untuk membuktikan fraud. Responden yang terkilan merayu ke Mahkamah Rayuan atas alasan bahawa tuntutan perayu terhalang oleh had masa. Mahkamah Rayuan mendapati bahawa oleh kerana kausa tindakan perayu adalah berdasarkan pelanggaran PJB, peruntukan yang diguna pakai adalah s 6 Akta Had Masa 1953 dan bahawa tuntutan perayu adalah oleh itu dihalang had masa. Akibatnya, Mahkamah Rayuan membenarkan rayuan responden dan tuntutan balasnya. Perayu telah mendapatkan kebenaran untuk meneruskan dengan rayuan ini. Perayu mengemukakan bahawa Mahkamah Rayuan telah terkhilaf dalam mendapati tuntutan mereka terhalang oleh had masa. Ia adalah hujah perayu bahawa PJB adalah tidak sah atas kegagalan perayu untuk memohon kebenaran daripada pihak berkuasa negeri dan PJB adalah tidak sah, pembelaan had masa tidak terdapat untuk perayu.

Diputuskan, membenarkan rayuan dengan kos sebanyak RM50,000:

(1) Pada masa material apabila SKW dilaksanakan oleh perayu bagi pihak responden, terma SKW telah memberi responden dengan kuasa untuk berurusan dengan tanah. Oleh kerana tanah tertakluk kepada sekatan kepentingan, kuasa yang diberikan kepada responden di bawah SKW sepatutnya termasuk kuasa untuk memohon kebenaran yang dikehendaki untuk pindah milik daripada pihak berkuasa negeri. Maka,

tanggungjawab untuk memohon kebenaran yang dikehendaki akan terletak ke atas responden (lihat perenggan 22–23).

(2) Keperluan untuk kebenaran untuk pindah milik daripada pihak berkuasa negeri adalah syarat duluan, yang mana sepatutnya dipenuhi sebelum apa-apa pindah milik boleh dilakukan. Sehingga syarat ini dipenuhi oleh responden, PJB tidak boleh terkesan dan jualan tanah tidak boleh disempurnakan. Namun, walaupun hampir dua dekad berlalu sejak pelaksanaan SKW, responden tidak memberikan apa-apa keterangan untutk menunjukkan bahawa dia telah mengambil apa-apa langkah untuk memohon kepada pihak berkuasa negeri untuk kebenaran yang diperlukan untuk memindahmilik. Kelengahan responden untuk mengambil tindakan adalah terlalu lama dan di bawah keadaan sebegitu responden sepatutnya tidak dibenarkan untuk menegaskan PJB adalah masih sah dan boleh dikuatkuasakan (lihat perenggan 29–30).

(3) Maka, PJB telah menjadi tidak sah dan s 33 Akta Kontrak 1950 akan terpakai. Satu kontrak tidak sah tidak menyebabkan apa-apa hak atau tanggungjawab yang boleh dikuatkuasakan dan di mana tidak terdapat sama ada hak atau tanggungjawab, had masa tidak boleh digunakan. Oleh itu, pembelaan had masa tidak terdapat untuk responden (lihat perenggan 31).]

Notes

For cases on sale and purchase, see 3(3) *Mallal's Digest* (5th Ed, 2015) paras 3323–3327.

Cases referred to

Chin Tai v Siow Shiow & Ors [1971] 1 MLJ 67, FC (refd)
Gimstern Corporation (M) Sdn Bhd & Anor v Global Insurance Co Sdn Bhd [1987] 1 MLJ 302, SC (refd)
Hubah Sdn Bhd & Ors v Koperasi Pusaka (Penampang) Bhd & Ors [2011] MLJU 230; [2011] 1 LNS 274, HC (refd)
Ideal City Development Sdn Bhd v Dynamic Mould Sdn Bhd [2003] 3 MLJ 152; [2003] 3 CLJ 201, CA (refd)
National Land Finance Co-Operative Society Ltd v Sharidal Sdn Bhd [1983] 2 MLJ 211, FC (refd)

Legislation referred to

Contracts Act 1950 s 33
Limitation Act 1953 ss 6, 6(1)(a), 9
National Land Code Form 14A

Appeal from: Civil Appeal No W-02(NCVC)(W)-2857-12 of 2012 (Court of Appeal, Putrajaya)

Gopal Sri Ram (Harpal Singh Grewal, Abd Shukor Ahmad, CK Lim, Khu Kim Huat, Julian Chan and David Yii with him) (Shukor Baljit & Partners) for the appellants.

Vincent Yap (Keith Kwan with him) (Chambers of Richard Ho & Yap) for the respondent.

Aziah Ali FCJ (delivering judgment of the court):

INTRODUCTION

[1] This is an appeal by the appellants against the decision of the Court of Appeal dated 22 August 2013 which had allowed the respondent's appeal against the decision of the High Court dated 31 October 2012 which allowed the appellants' claim and dismissed the respondent's counterclaim.

QUESTIONS OF LAW

[2] On 26 March 2015 leave to appeal was granted by this court on the following questions of law:

(a) whether limitation applies to a case where the contract becomes void and/or unenforceable for failure of a condition precedent? and

(b) whether judgment could be entered in favour of the defaulting party where the contract was void and/or unenforceable for failure of a condition precedent?

BACKGROUND FACTS

[3] The first, second, third and fourth appellants together with one Mohtar bin Abdullah jointly owned a piece of land known as PM No 256, Lot No 13648, Kg Sg Kayu Ara, Mukim of Sungai Buluh, District of Petaling, State of Selangor Darul Ehsan ('the land'). The land is subject to an express restriction in interest as follows:

> Sekatan Kepentingan:
>
> Tanah ini tidak boleh dipindahmilik, dipajak atau digadai melainkan dengan kebenaran Pihak Berkuasa Negeri.

[4] The first, second, third and fourth appellants and Mohtar bin Abdullah had entered into a sale and purchase agreement dated 8 September 1992 ('the SPA') with the respondent to sell the land for RM200,000. The salient terms of the SPA are as follows:

(a) upon execution of the SPA, the purchaser shall pay the deposit of RM70,000; A

(b) upon payment of the deposit, the vendors shall deliver the original issue document of title ('IDT') to the solicitor and shall sign a memorandum of transfer (Form 14A) to be held in escrow for the purpose of assessment of stamp duty and subsequent registration at the land office after payment of the balance purchase price; B

(c) the balance purchase price of RM130,000 shall be paid to the solicitor as stakeholder within three months from the date consent to transfer is obtained from the state authority; C

(d) the solicitor shall deliver the balance purchase price to the vendors within seven days from presentation of the transfer at the appropriate land office and the vendors shall deliver vacant possession to the purchaser; D

(e) in the event the purchaser fails to pay the balance purchase price, the vendors have the right to terminate the SPA and the purchaser is not entitled to claim anything from the vendors;

(f) in the event that consent from the state authority cannot be obtained, then the vendors shall refund the deposit paid and the SPA is deemed terminated; and E

(g) time shall be the essence of the contract.

It is common ground that the respondent had paid a deposit of RM70,000. F

[5] On or about 14 September 1993 the first, second, third and fourth appellants and Mohtar bin Abdullah executed a power of attorney ('PA') in favour of the respondent to deal with the land. Upon the death of Mohtar bin Abdullah, his share came to be vested in the names of the fifth, sixth, seventh, eighth and ninth appellants, who are his beneficiaries. G

[6] It is the appellants' case that when they had not been paid the balance purchase price, they went to look for the solicitor to inquire as to the status of the transaction. Unfortunately they failed to locate the solicitor because he was no longer in practice. The appellants then applied for a duplicate copy of the IDT and also revoked the PA. H

[7] In 2012, the appellants filed the suit in the High Court and sought for the following reliefs: I

(a) a declaration that the SPA is no longer in force and the deposit paid be forfeited;

(b) that the PA is not valid and enforceable under the law;

(c) that the private caveat lodged by the respondent over the land is invalid and be removed;

(d) that the respondent be prevented from dealing with the land;

(e) that the respondent deliver all information with regard to the status of the approval to transfer the land and/or any status in relation to the land which is under the possession, control and custody of the respondent;

(f) that a date be fixed for assessment of damages; and

(g) costs.

[8] The respondent disputed the appellants' claim. The respondent asserted that the first, second, third and fourth appellants and the late Mohtar bin Abdullah had pressured him for payment of the balance purchase price. Upon consulting the solicitor, he had paid the balance purchase price and the late Mohtar bin Abdullah had executed the PA in his favour. The respondent counterclaimed seeking for, amongst others, a declaration that the SPA is valid and enforceable and for damages for fraud.

AT THE HIGH COURT

[9] The trial judge found that the sale was contingent upon consent to transfer being obtained from the state authority. Thus any transfer of the land without the state authority's consent would not be possible. It was a finding made by the trial judge that it was the respondent's obligation to apply to the state authority for consent to transfer. He had been given ample opportunity to perform his part of the bargain but had failed to do so.

[10] The trial judge found no evidence that consent had ever been applied for by the respondent and the balance purchase price had not been paid to the appellants. The appellants are therefore entitled to rescind the SPA and be discharged from further performance of the SPA. Consequently, the appellants' claim was allowed with costs. In respect of the counterclaim, the trial judge found that the respondent had failed to prove fraud and the counterclaim was accordingly dismissed.

AT THE COURT OF APPEAL

[11] Aggrieved by the decision of the High Court, the respondent appealed to the Court of Appeal. It was contended by the respondent that as the appellants' cause of action is based on a breach of the SPA, s 6(1)(a) of the Limitation Act 1953 ('the Act') applied. As such the respondent contended that the appellants' claim is time-barred.

[12] The Court of Appeal accepted the finding made by the trial judge that the obligation to apply for the state authority's consent to transfer the land rests with the respondent and that there is no evidence that the consent was ever applied for. The Court of Appeal further accepted the appellants' case that they have not received payment for the balance purchase price. However the sole issue upon which the Court of Appeal made its decision was whether limitation applies to the appellants' claim.

[13] The Court of Appeal made the following findings:

(a) the plaintiffs' cause of action is for breach of contract and not for recovery of land;

(b) the applicable provision is s 6 and not s 9 of the Act;

(c) the breach occurred when the respondent failed to apply for the consent of the state authority for the transfer of the land and when the respondent failed to pay the balance purchase price as provided under cl 3 of the SPA; and

(d) the appellants' action is caught by s 6 of the Act.

Consequently the Court of Appeal allowed the respondent's appeal in respect of the appellants' claim and also allowed his counterclaim. Hence this appeal.

AT THE FEDERAL COURT

[14] Before us, learned counsel for the appellants submitted that the Court of Appeal had erred in arriving at the finding that the appellants' claim is time-barred. It was submitted that the Court of Appeal had failed to appreciate that the SPA was void and unenforceable on account of the respondent's failure to apply for consent from the state authority to transfer the land. Since the SPA is void and unenforceable, the defence of limitation is not available to the respondent (*Hubah Sdn Bhd & Ors v Koperasi Pusaka (Penampang) Bhd & Ors* [2011] MLJU 230; [2011] 1 LNS 274).

[15] Learned counsel had submitted that consent from the state authority is a condition precedent to the transfer of the land and this was accepted by both the respondent and the counsel during the trial. The trial judge had found that the obligation to apply for such consent rests with the respondent. However there is no evidence that such consent had been applied for.

[16] It was submitted that the appellants had the option to either terminate the SPA or to allow the SPA to continue. In this case, the appellants allowed the SPA to continue. Learned counsel submitted that the respondent is therefore not absolved from fulfilling the condition precedent and he ought to have taken steps to obtain consent from the state authority within a reasonable time

after the PA was executed. The respondent's failure to fulfil the condition precedent means that the transfer of the land has become impossible since such transfer is incapable of registration. Since the transfer of the land has become impossible, learned counsel submitted that the SPA is rendered void and unenforceable and s 33 of the Contracts Act 1950 applies. In support of his submissions, learned counsel cited the case of *National Land Finance Co-Operative Society Ltd v Sharidal Sdn Bhd* [1983] 2 MLJ 211.

[17] In respect of the respondent's counterclaim, learned counsel for the appellants submitted that the Court of Appeal had erred in allowing the respondent's counterclaim because, following from its finding that the appellants' claim is barred by limitation, the Court of Appeal ought to have found that the respondent's counterclaim, which arises from the same action pleaded by the appellants, would also be time-barred.

[18] For the respondent, learned counsel submitted that the Court of Appeal is correct in finding that the appellants' action is time-barred because the appellants' cause of action is the breach of the SPA due to the non-payment of the balance of the purchase price. The respondent had pleaded limitation as a defence. It was submitted that the issue of condition precedent was never raised before the High Court and the Court of Appeal. Learned counsel maintained that the obligation to apply for consent was not on the respondent and, even if there was a failure to apply for consent, this is a breach of the SPA and the SPA was voidable at the option of the appellants.

[19] In his reply, learned counsel for the appellants reiterated that the High Court had found that the obligation to apply for consent was on the respondent and he had failed to apply for consent from the state authority and had also failed to pay the balance of the purchase price. Since the respondent is the defaulting party, he ought not to be allowed to take advantage of his own wrong to defeat the appellants' claim (*Gimstern Corporation (M) Sdn Bhd & Anor v Global Insurance Co Sdn Bhd* [1987] 1 MLJ 302).

OUR DECISION

[20] The appellants contended that the respondent failed to carry out his obligation to fulfil the condition precedent to apply to the state authority for consent to transfer. As a consequence, a transfer of the land had become impossible and therefore the SPA had been rendered void and unenforceable and s 33 of the Contracts Act 1950 applies.

[21] Despite the finding made by the trial judge that it was the respondent's obligation to apply for consent from the state authority, learned counsel for the respondent maintained that it was not the respondent's obligation to apply for such consent.

[22] We are unable to agree with the contention of the respondent. Notwithstanding the issue of the validity of the SPA that was raised by the appellants, we note that at the material time when the PA was executed by the appellants in favour of the respondent, the terms of the PA had clothed the respondent with authority to deal with the land. This is manifested in cl 9 of the PA which provides as follows:

> 9. To sell to any person all or any of my lands, leases and charges and moveable property whether now belonging to me or which shall hereafter belong to me and for that purpose to sign and execute all transfers and other instruments necessary.

[23] It is thus plain that subsequent to the execution of the PA, the appellants had empowered the respondent to sell the land and for that purpose, the respondent was authorised to sign and execute all transfers and other instruments necessary in order to enable the land to be sold. As the land is subject to the restriction in interest, the authority conferred upon the respondent under the PA must necessarily include the authority to apply for the required consent to transfer from the state authority. Hence we agree with the trial judge that the obligation to apply for the required consent rests with the respondent.

[24] Learned counsel for the appellants had cited the case of *National Land Finance Co-Operative Society Ltd v Sharidal Sdn Bhd* in support of his submissions that failure to fulfil the condition precedent rendered the SPA void and unenforceable. In that case, the Federal Court had said that where parties had entered into a sale with a condition that such sale is contingent upon the approval from another authority over which the parties have no control, such a condition is a condition which is known in the law of contract as a 'contingent condition' the effect of which is that the contract shall not take effect unless and until the condition is fulfilled.

[25] Briefly the facts in the case of *National Land Finance Co-Operative Society Ltd v Sharidal Sdn Bhd* show that the respondents had entered into an agreement by which the respondents had agreed to sell and the appellants had agreed to buy a property known as 'Sharidal Complex'. Clause 2(b) of the agreement requires the purchaser to apply to the Foreign Investment Committee ('FIC') for approval of the sale and purchase. It was also provided that all monies paid by the purchaser shall be returned to the purchaser in the event that approval is not given by the FIC. The appellants applied to the FIC for approval but the FIC did not agree to the deal as it would reduce Bumiputra

ownership of immoveable properties and requested the respondents to reconsider their proposal. The respondents next wrote to the appellants stating that in the light of the said FIC's letter the agreement had determined in accordance with cl 2(b). The reply from the appellants was that they were still waiting for the decision of the FIC and that in their view the agreement was still in force. The appellants had sent a letter appealing to the FIC to reconsider its decision. However, by a letter dated 30 April 1981 the FIC expressed its objection to the proposal as it stood but went on to say that it would agree to the sale if it was to a joint-venture company of which at least 30% of its equity is held by Bumiputras. Pursuant to appeals by the appellants to the FIC to reconsider its decision, the FIC replied reaffirming its view in its earlier letter dated 30 April 1981. In any event, the parties failed to meet the requirement stipulated by the FIC.

[26] The respondents filed an originating summons asking for a declaration, amongst others, that the agreement became void on 30 April 1981 because the FIC's letter of that date refused to approve the sale to the appellants. The appellants, on the other hand, maintained that the agreement did not become void but still subsists because the FIC's letter was not an absolute rejection of the deal but a conditional approval. The Federal Court held that the requirement for FIC approval 'belongs to the category of contingent conditions the non-fulfilment of which negates the existence of any contractual relationship between the parties to complete the agreement'.

[27] Salleh Abas CJ (Malaya) (as he then was) in delivering the judgment said, amongst others, as follows:

> It is therefore obvious that the parties have entered into a contract of sale contingent upon the approval of the transaction by the FIC over which the parties had no control. There was no promise, nor guarantee that such approval would be given. Such a condition, in our judgment, is more than a mere essential stipulation of the contract, a breach of which entitles an innocent party to regard itself as discharged from further performance and to sue for damages. It is, however, a condition which is known in the law of contract as a contingent condition, the effect of which is that contract shall not take effect unless and until the condition is fulfilled. (See *Trans Trust SPRL v Danubian Trading Co Ltd*) — per Denning LJ — and *Property and Bloodstock Ltd v Emerton*; *Bush v Property and Bloodstock Ltd* — per Sachs LJ. Until the FIC approval was given liability for further performance remained unenforceable, ie suspended although neither the respondents nor the appellants could resile from it until it could be definitely ascertained that the condition could not be fulfilled. This is in effect laid down by s 33(a) of the Contracts Act which enacts:
>
> > 33(a) Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.
>
> As the approval in this case was refused it means that contingent event becomes

impossible and the agreement therefore becomes void in accordance with s 33(b) of the Contracts Act, which is as follows:

33(b) If the event becomes impossible, such contracts become void.

[28] *National Land Finance Co-Operative Society Ltd v Sharidal Sdn Bhd* was followed in the case of *Ideal City Development Sdn Bhd v Dynamic Mould Sdn Bhd* [2003] 3 MLJ 152; [2003] 3 CLJ 201. In that case Richard Malanjum JCA (as His Lordship then was) in delivering the judgment of the Court of Appeal said that the requirement to obtain the consent/approval from FIC was a condition precedent and thus a contingent condition.

[29] Likewise in the present appeal, we find that the requirement for consent to transfer from the state authority is a condition precedent which must be fulfilled before any transfer of the land is possible. Until fulfilled by the respondent, the SPA shall not take effect and the sale could not be completed. The trial judge is correct in his observation that any transfer of the land in breach of the restriction in interest would be incapable of registration. In the case of *Chin Tai v Siow Shiow & Ors* [1971] 1 MLJ 67, the Federal Court held that the transfer in favour of the purchaser was incapable of registration unless the permission of the Collector of Land Revenue was obtained since the title to the land contained a restriction requiring such consent.

[30] Learned counsel for the respondent had submitted that the respondent could still apply for consent. We take note that approximately two decades had passed since the execution of the PA, and yet the respondent did not furnish any evidence to show that he had taken any step to apply to the state authority for the requisite consent to transfer. We find that the respondent's delay to take action is unreasonably long. We agree with the appellants' submissions that the application ought to have been made within a reasonable time. The respondent herein ought not to be allowed to insist that the SPA is still valid and enforceable when, for the last 20 years, he had demonstrated a lackadaisical attitude to complete the sale transaction. In the case of *Gimstern Corporation (M) Sdn Bhd & Anor v Global Insurance Co Sdn Bhd* the Supreme Court had held that 'the blameable party cannot be permitted to take advantage of his own wrong'.

[31] We agree with the appellants that the SPA had become void and s 33 of the Contracts Act 1950 applies. A void contract does not generate any enforceable right or duty. Where there is neither right nor duty, limitation cannot be invoked (see *Hubah Sdn Bhd & Ors v Koperasi Pusaka (Penampang) Bhd & Ors*. The defence of limitation is thus not available to the respondent.

CONCLUSION

[32] For the foregoing reasons we answer the two questions posed in the negative. We therefore allow the appeal. The decision of the Court of Appeal is set aside. We affirm the decision of the High Court.

[33] With regard to the reliefs prayed for by the appellants, having regard to the fact that the appellants are still the registered owners, and since no application for consent had been made, we find that only three reliefs are necessary for the purpose of this appeal and they are as follows:

(a) a declaration that the SPA is no longer in force and the deposit paid be forfeited;

(b) that the private caveat lodged by the respondent over the land is invalid and be removed; and

(c) costs.

We therefore enter judgment for the appellants in terms of the three reliefs abovementioned. In respect of costs, we award costs to the appellant in the sum of RM50,000 here and below. The costs awarded is subject to the payment of allocator. The deposit paid is refunded to the appellants.

Appeal allowed with costs of RM50,000.

Reported by Kohila Nesan